

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

CITY OF DAYTON,

:

Case No. 3:11-cv-383

Plaintiff,

-vs-

:

Magistrate Judge Michael J. Newman
(Consent Case)

A.R. ENVIRONMENTAL, INC., *et al.*,

Defendants.

:

**ORDER GRANTING PLAINTIFF’S MOTION TO DISMISS (DOC. 120);
DISMISSING PLAINTIFF’S CLAIMS AGAINST DEFENDANT ALEX PENLAND
WITHOUT PREJUDICE; DENYING AS MOOT DEFENDANT
PENLAND’S MOTIONS (DOCS. 54, 98); AND TERMINATING THIS CASE**

This consent case is before the Court upon the motion of Plaintiff City of Dayton to dismiss its claims against Defendant Alex Penland without prejudice pursuant to Fed. R. Civ. P. 41(a)(2).¹ Doc. 120. Defendant Penland has not filed a memorandum in opposition to Plaintiff’s dismissal motion, and the time period to do so has expired.² There are no pending counterclaims in this case. *See* doc. 64. Accordingly, for good cause shown and pursuant to Fed. R. Civ. P. 41(a)(2), the Court **GRANTS** Plaintiff’s motion to dismiss (doc. 120) and **ORDERS** as follows:

1. Plaintiff’s claims against Defendant Alex Penland are **DISMISSED WITHOUT PREJUDICE**;

¹ On October 29, 2012, a default judgment was entered against the Defendant A.R. Environmental, Inc, *see* doc. 118, leaving Alex Penland as the only Defendant remaining in this case.

² It appears that Penland did not receive the Court’s recent Orders (docs. 118, 119) because his mail was returned as undeliverable. *See* docs. 121, 122. According to the Certificate of Service, Plaintiff mailed a copy of its motion to dismiss to the same address listed on the docket sheet. *See* doc. 120 at PageID 650. Penland was advised in the Scheduling Order issued in this case on March 27, 2012 that he must notify the Court and all parties if his address changes. *See* doc. 34 at PageID 286. He has failed to do so.

2. The pending motions filed by Defendant Penland (docs. 54, 98) are **DENIED AS MOOT**; and

3. This case is **TERMINATED** upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

IT IS SO ORDERED.

November 27, 2012

s/ **Michael J. Newman**
United States Magistrate Judge